

Guidelines for Employment Status

UTAH EMPLOYMENT SECURITY ACT

The Utah Employment Security Act Section 35A-4-204(3) is the Utah Code that sets the guidelines for determining whether an individual is an **“employee”** or an **“independent contractor”**. The Utah Employment Security Act states: “Services performed by an individual for wages or under any contract of hire, written or oral, express or implied, are considered to be employment subject to this chapter, unless it is shown to the satisfaction of the division that:

- (a) the individual is customarily engaged in an independently established trade, occupation, profession, or business of same nature as that involved in the contract of hire for services; and
- (b) the individual has been and will continue to be free from control or direction over the means of performance of those services, both under the individual's contract of hire and in fact.”

FACTORS TO DETERMINE **INDEPENDENT CONTRACTOR** STATUS

The following factors are considered to determine if an individual is customarily engaged in an independently established trade, occupation, profession or business. These factors are intended only as guides for determining whether an individual is an independent contractor. The degree of importance of each factor varies depending on the occupation and the factual context in which the services are performed.

Separate Place of Business: The individual has his own place of business separate from that of the employer.

Tools and Equipment: The individual has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. “Tools of the trade” such as those used by carpenters, mechanics, etc. do not necessarily demonstrate independence.

Other Clients: The individual performs services of the same nature for other customers or clients and is not required to work full time for the employer.

Profit or Loss: The individual is in a position to realize a profit or loss through his independently established business activity.

Advertising: The individual advertises his services in telephone directories, newspapers, magazines, or by other methods clearly demonstrating that he holds himself out to the public to perform the services.

License: The individual has obtained any required and customary business, trade, or professional licenses.

Business Tax Forms: The individual files self-employment and other business tax forms required by the Internal Revenue Service and other tax agencies.

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FACTORS TO DETERMINE **EMPLOYEE** STATUS

The following factors will be considered to determine if an individual's services are subject to the employer's right of control and direction. These factors are intended only as guides for determining whether an individual is an employee. The degree of importance for each factor varies depending on the occupation and the factual context in which the services are performed.

Instruction: A worker who is required to comply with another person's instructions about when, where and how he is to work is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with instructions.

Training: Training an individual by requiring an experienced person to work with the individual, by corresponding with the individual to attend meetings, or by using other methods, indicates that the employer for whom the services are performed expects the services to be performed in a particular method or manner.

Pace or Sequence: A requirement that the service must be provided at a pace or ordered sequence imposed by the employer indicates control and direction.

Personal Service: If the services must be performed personally, presumably the employer for whom the services are performed is interested in the methods used to accomplish the work as well as in results.

Work on Employer's Premises: A requirement that the service be performed on the employer's premises generally indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

Continuing Relationship: A continuing relationship between the individual and the employer indicates that an employer-employee relationship exists. A continuing relationship may exist where work is performed at frequently recurring although irregular intervals.

Set Hours of Work: The establishment of set hours of work by the employer indicates control.

Method of Payment: Payment by the hour, week or month generally points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying a lump sum agreed upon as the cost of a job.

FURTHER INFORMATION

Unemployment Insurance

140 East 300 South
Salt Lake City, UT
(801) 526-9577 SL Valley
(800) 222-2857 Toll Free
<http://jobs.utah.gov/ui/>



Department of Workforce Services

140 East 300 South Salt Lake City, Utah 84111 1-888-920-WORK jobs.utah.gov

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Auxiliary aids and services are available upon request to individuals with disabilities. Call (801) 526-9240. Individuals with speech and/or hearing impairments may call the state relay by dialing 711. Spanish Relay Utah: 1-888-346-3162.